

These are the tentative rulings for civil law and motion matters set for Friday, March 13, 2020, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, March 12, 2020. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

PLEASE NOTE: IN MOST INSTANCES, LAW AND MOTION MATTERS MAY PROCEED BY TELEPHONIC APPEARANCE AND PERSONAL APPEARANCE AT THE COURTHOUSE IS NOT REQUIRED.

All telephone appearances are governed by Local Rule 20.8. More information is available at the court's website: www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER GLENN M. HOLLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 31, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0073853 CACH, LLC vs. Fox, Connie Lee

Plaintiff's motion to deem requests for admissions admitted is granted. Plaintiff's requests for admission, set one, are deemed admitted by defendant Connie Lee Fox.

2. M-CV-0074879 Yassine, Mazen vs. Martin, Randall, et al

This tentative ruling is issued by the Honorable Garen J. Horst. If oral argument is requested, it shall be heard **Tuesday, March 17, 2020, at 8:15 a.m. in Department 4, located at the Historic Courthouse in Auburn.**

Motion for Attorneys' Fees

Plaintiff is the prevailing party in this unlawful detainer action as judgment was entered in her favor on January 7, 2020. Plaintiff now seeks fees pursuant to the terms of the lease agreement between the parties, which contains an attorneys' fees provision.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. Plaintiff seeks compensation for 24.5 hours incurred by counsel, at the requested billing rate of \$300/hour. "The reasonable hourly rate is that prevailing in the community for similar work." *Id.* at 1095. The court finds that the requested

billing rate is reasonable in light of the billing rates prevailing in the community for similar services. Turning to the number of hours expended, the court has carefully reviewed plaintiff's moving papers, and the entire file in this action. Based upon that review, the court awards plaintiff reasonable attorneys' fees totaling \$5,250.

3. M-CV-0075951 Manzo, Vicenta, et al vs. Bingham, Michael William, et al

Defendants Michael William Bingham and Doris Christina Garcia Bingham demur to the unlawful detainer complaint filed by plaintiffs Vicente Manzo and Davina Mariano.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. In this case the complaint, when read as a whole, alleges sufficient facts to support plaintiffs' claim for unlawful detainer.

Defendants' demurrer is overruled. Defendants shall file and serve their answer to the complaint on or before March 20, 2020.

4. S-CV-0034273 Griggs, William, et al vs. Centex Homes, et al

The motion to enter case management order is continued to April 3, 2020, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones.

The court notes that plaintiffs' reply brief references an opposition filed by Milgard Manufacturing, Inc. The court has no record of this opposition being filed. Milgard Manufacturing, Inc. shall be permitted to file its opposition no later than nine court days prior to the continued hearing date.

5. S-CV-0036067 Fang, Fujian, et al vs. Wilkens, Timothy, et al

The motion to be relieved as counsel is **continued to April 17, 2020, at 8:30 a.m. in Department 31.**

As counsel indicates that they have no reliable way to contact their clients except by email, counsel shall attempt to electronically serve plaintiffs with all moving papers and notice of the continued hearing date. Counsel is advised that the notice of continued hearing date must also include notice of the court's tentative ruling advisement. Local Rule 20.2.3(C).

6. S-CV-0039467 Michael Adey, as the Successor Trustee vs. Kotokos, Angeline

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard March 13, 2020, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to be Relieved as Counsel

The motion to be relieved as counsel for plaintiff by James Pagano, Esq. and Pagano & Kass, APC, is granted, effective upon the filing of the proof of service of the signed order after hearing on plaintiff Michael Adey, as the successor trustee for the Spadini Revocable Living Trust.

7. S-CV-0040311 Valencia, Luis Miguel, et al vs. Auger Construction, Inc., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard March 13, 2020, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion to Approve Settlement and Dismiss Causes of Action

Plaintiffs' request for judicial notice is granted.

Plaintiffs' motion to approve settlement of individual claims, and dismiss causes of action under the Private Attorney General Act, is granted. Pursuant to Labor Code section 2699(l)(2), the court approves the settlement agreement attached as Exhibit A to the declaration of Amanda Heitlinger. Plaintiffs' individual claims shall be dismissed with prejudice. The causes of action alleged pursuant to the Private Attorney General Act shall be dismissed without prejudice.

8. S-CV-0041225 Garcia, Patrick vs. City of Lincoln, et al

Motion to Compel Further Responses to Discovery

As a preliminary matter, the court notes that defendant's notice of motion includes incorrect tentative ruling information for this court. The parties are referred to Local Rule 20.2.3.

Defendant Zachary Rockwell's motion to compel further discovery responses is granted in part, and denied in part.

The motion is denied as to Request Nos. 5, 6, 11 and 12. Plaintiff has identified those documents which he contends are responsive to these requests, and states that he has produced all responsive documents. Defendant submits no evidence suggesting that plaintiff may have additional documents which are responsive to these requests which have not been produced.

The motion is denied as to Request Nos. 13 and 14. Plaintiff did not waive applicable objections as to these requests, as the objections were timely served within the one week extension agreed to by the parties. *Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657. Plaintiff's tax returns are privileged. *Deary v. Superior Court* (2001) 87 Cal.App.4th 1072, 1077. Defendant does not establish a waiver or intentional relinquishment of the privilege, and makes no showing that plaintiff's economic loss can only be established by disclosure of tax returns.

The motion is otherwise granted. The remaining requests seek documents relating to plaintiff's damages in this action, or documents identified in plaintiff's other discovery responses. Plaintiff generally describes "accounting records", "financial records" and a "financial/summary" as having been produced. In actuality, it appears that plaintiff has produced three profit/loss statements and one financial summary. Such documents could not be prepared without reference to other documents and records, which have not been produced. Thus it is clear that plaintiff has not produced all responsive documents. Further, plaintiff has identified in discovery responses and deposition testimony other potentially responsive documents including documents reflecting online advertising, Groupon sales receipts, a ticket sales ledger, and paychecks. Finally, although plaintiff objected to Request No. 15 on the grounds that it "calls for production of confidential tax returns", plaintiff does not demonstrate that tax returns are the only documents that would be responsive to this request, which seeks plaintiff's employment records for the past five years.

Defendant's request for an order requiring plaintiff to serve supplemental responses to defendant's request for production of documents, set two, is denied. Contrary to the argument set forth in the reply brief, plaintiff has not indicated that he has no responsive documents with respect to any of the requests.

Plaintiff shall produce all additional responsive documents on or before March 27, 2020. Defendant's request for sanctions is denied as the notice of motion does not request sanctions.

Motion to Continue Trial

Appearance required on March 13, 2020, at 8:30 a.m. in Department 31.

9. S-CV-0041807 Boyle, Barbara vs. County of Placer, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard March 13, 2020, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Leave to File Cross-Complaint

Defendants' motion for leave to file cross-complaint is granted. Defendants shall file their cross-complaint on or before March 27, 2020.

10. S-CV-0042249 Abramov, Andrey B. vs. Rakin, Andrey

Plaintiff Andrey Abramov's motion for leave to file verified first amended complaint is granted.

The court's discretion will usually be exercised liberally to permit amendment of the pleadings. *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939. Courts must apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," unless prejudice to the adverse party is shown. *Atkinson v. Elk Corp.* (2003) 109

Cal.App.4th 739, 761. The court will not consider the validity of the proposed amendments at this stage. *See Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.

Defendant Andrey Rakin (“Rakin”) and intervenor Iana Shumeiko (“Shumeiko”) argue that it is inappropriate to substitute Shumeiko as Doe 1 in this action, given that some of the proposed amendments relate to events occurring after the filing of the complaint. Rakin and Shumeiko further argue that causes of action relating to events occurring after the filing of the complaint are appropriately raised in a supplemental complaint, as opposed to an amended complaint. The court determines that the proposed amended complaint is an appropriate method of alleging plaintiff’s current causes of action, as amended, and the new causes of action arising from events occurring after the filing of the complaint. *See Honig v. Fin’l Corp. of America* (1992) 6 Cal.App.4th 960, 966. The court does not at this time take any position with respect to whether grounds exist for a demurrer or motion to strike the new allegations. Finally, the court finds that Rakin and Shumeiko fail to demonstrate prejudice sufficient to deny plaintiff’s motion.

Plaintiff shall file and serve his first amended complaint on or before March 27, 2020.

11. S-CV-0042799 Wright, Shirley, et al vs. Likely Land & Livestock Co., Inc.

Defendants’ motion to strike pleadings is denied. Defendants fail to set forth authority permitting the court to strike prior pleadings in these factual circumstances, where any questions regarding the properly named trustee or attorney-in-fact have now been cured.

12. S-CV-0043521 Bergendahl, Karen vs. Tahoe Yacht Club Foundation

The application of Thierry V. Barkley, Esq. to appear as counsel *pro hac vice* is **continued to April 17, 2020, at 8:30 a.m. in Department 31.**

The application is currently deficient as it fails to state applicant’s residence address. Cal. R. Ct., rule 9.40(d)(1). Further, applicant does not state whether the required \$50 fee has been paid to the State Bar of California. Finally, the proof of service for the motion does not comply with Rule 9.40(c)(1) as the San Francisco office of the California State Bar is not listed as being served with the application.

The matter is continued to afford applicant time to remedy these deficiencies through submission of an amended application. Applicant shall also file and serve notice of the continued hearing date on all parties and the San Francisco office of the California State Bar.

13. S-CV-0043861 Farnell, R. Richard vs. Kott, Steve, et al

Plaintiff R. Richard Farnell’s motion for reconsideration is denied.

As a preliminary matter, the motion is procedurally improper as plaintiff did not file a notice of motion. Cal. R. Ct., rules 3.1110, 3.1112. Nevertheless, even if the court considered plaintiff’s motion, it would still be denied. A motion for reconsideration under Code of Civil Procedure section 1008(a) must be based on new or different facts, circumstances or law not

previously considered by the court. Plaintiff's motion is partially based on defendants' failure to serve their cross-complaint. Defendants' failure to serve their cross-complaint has no bearing on the court's ruling setting aside the default of defendant Steve Kott ("Kott") after he failed to timely respond to the complaint.

Plaintiff otherwise argues that the motion to set aside default was procedurally improper because it did not include a copy of the cross-complaint. Code of Civil Procedure section 473(b) requires that the application seeking relief be accompanied "by a copy of the answer or other pleading proposed to be filed therein". The cross-complaint was filed December 17, 2019, and was not the pleading proposed to be filed by Kott if his default was set aside. The motion to set aside default did attach a copy of Kott's proposed answer, and therefore complied with the requirements of the statute.

14. S-CV-0044123 Rizzonelli, Roxanne, et al vs. Pride Industries, Incorporated

Defendant Pride Industries, Incorporated ("Pride") demurs to plaintiffs' second cause of action for general negligence/wrongful death.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

Pride's demurrer is overruled. Plaintiffs allege that they are "the surviving sister and brother and only lawful heirs within the meaning of Code of Civil Procedure Section 377.60 of DANETTE RIZZONELLI." (Complaint at 2:15-17.) This allegation is sufficient at the pleading stage to establish standing for purposes of plaintiffs' claim for wrongful death. Further, plaintiffs are not required to comply with Code of Civil Procedure section 377.32, as the second cause of action is not alleged as decedent's cause of action. *See Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 301. Pride's request in the reply brief that plaintiffs be required to amend their prayer for damages, or remove certain other allegations, is denied as such relief was not requested in the moving papers.

The parties' competing requests for sanctions pursuant to Code of Civil Procedure section 128.5 are denied, as neither plaintiffs nor Pride demonstrate compliance with the procedural requirements of the statute. Even if the parties had complied with such requirements, the court would not award sanctions under the circumstances presented.

Defendant shall file and serve its answer to the complaint on or before March 27, 2020.

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